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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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August 16, 1996

DOCKET FILE COPY ORIGINAL

HAND-DELIVERED

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-
Licensed Space Stations to Provide Domestic and International Satellite
Service in the United States, FCC 96-210, released May 14, 1996
(Notice of Proposed Rule Making in IB Docket No. 96-111)*

Dear Mr. Secretary:

On behalf of Orion Network Systems, Inc. ("Orion"), and pursuant to Section 1.419 of the Commission's Rules, I enclose herewith for filing an original and four (4) copies of Orion's Reply Comments in response to the Notice of Proposed Rule Making in the proceeding noted above.

Kindly stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material to the undersigned.

Respectfully submitted,


Eric T. Werner

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Regulatory)
Policies to Allow Non-U.S.-Licensed Space)
Stations to Provide Domestic and International)
Satellite Service in the United States)
)
and)
)
Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only Earth)
Stations)
)
and)
)
COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules As It Applies to)
Services Provided via the Intelsat K)
Satellite)

IB Docket No. 96-111

CC Docket No. 93-23
RM-7931

DOCKET FILE COPY ORIGINAL

File No. ISP-92-027

TO: The Commission

REPLY COMMENTS OF ORION NETWORK SYSTEMS, INC.

ORION NETWORK SYSTEMS, INC.

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August 16, 1996

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SUMMARY

In these Reply Comments, Orion addresses four specific issues discussed by other parties in their initial Comments in this proceeding. First, Orion responds to ICO Global Communications's contention that the FCC lacks the requisite authority to promulgate the pro-competitive ECO-Sat test contemplated in the Notice. Orion firmly embraces the efforts of the United States Trade Representative ("USTR") to achieve a multilateral solution to these pressing trade issues in the telecommunications arena in the negotiations of the Group on Basic Telecommunications ("GBT") of the World Trade Organization ("WTO"). Nevertheless, it is also clear that the FCC possesses a separate, independent basis of authority to adopt the proposals announced in the Notice, an authority which does not encroach on the powers of the Executive Branch. The Commission's actions in the instant proceeding provide a valuable counterpoint to the work of the USTR and should move forward on a parallel track with the WTO talks.

Second, Orion disputes the claims of ICO and COMSAT Corporation that imposition of the ECO-Sat test to each of them would impair competition. In point of fact, application of the ECO-Sat test would enhance competition by curbing the ability of these entities unfairly and abusively to leverage their dominant position in the global market to the detriment of their competitors. These parties' comments, and those of INTELSAT, reinforce Orion's contention that the numerous and complex factual and legal issues associated with proposals to liberalize U.S. market access for Intergovernmental Satellite Organizations ("ISOs") and their affiliates and successors should be reserved and addressed in a separate rule making proceeding at a later time when the relevant factual context has become clearer.

Third, Orion underscores the need for the Commission to reconcile the critical inconsistency between its stated intention to accept the sufficiency of foreign licensing orders and its proposal to require foreign systems to demonstrate compliance with FCC legal, technical, and especially financial qualification standards. As Orion and others have observed, the Commission cannot impose such a compliance requirement without inviting a counterproductive anti-competitive response from the affected foreign administrations. However, failure to address this discrepancy between U.S. qualification standards and the often more liberal standards to which non-U.S.-applicants are subject will leave U.S. licensees, especially those who are not "self-funded," at a severe competitive disadvantage. To resolve this dilemma harmoniously with the pro-competitive objectives of the Notice, the Commission should revisit its decision in *DISCO I* and apply a two-stage financial qualification showing to all U.S. applicants.

Finally, Orion responds to concerns voiced by the major broadcast television network that the Commission protect their access to an adequate supply of satellite capacity so as not to impair their ability to provide coverage of breaking news and special events around the world. Orion understands the networks' but disagrees that a blanket exemption from the ECO-Sat test is an appropriate remedy. Instead, the Commission should adopt a very narrowly tailored provision exempting from the ECO-Sat test only those foreign-licensed systems whose home markets U.S.-licensed satellite operators are incapable of serving. Moreover, the Commission should undertake to revisit any such exemption on a periodic basis to determine whether U.S. operators have developed the capability of serving these markets.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Amendment of the Commission's Regulatory)
Policies to Allow Non-U.S.-Licensed Space)
Stations to Provide Domestic and International)
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IB Docket No. 96-111

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Amendment of Section 25.131 of the)
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COMMUNICATIONS SATELLITE)
CORPORATION)
Request for Waiver of Section 25.131(j)(1))
of the Commission's Rules As It Applies to)
Services Provided via the Intelsat K)
Satellite)

File No. ISP-92-027

TO: The Commission

REPLY COMMENTS OF ORION NETWORK SYSTEMS, INC.

ORION NETWORK SYSTEMS, INC. ("Orion"), by its attorneys, and pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419 (1995), hereby submits its Reply Comments in accordance with the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rule Making in the above-captioned proceeding ("Notice").^{1/} In these Reply Comments, Orion responds to Comments

^{1/} *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, FCC 96-210, released May 14, 1996 (Notice of Proposed Rule Making in IB Docket No. 96-111).

filed by other parties in this proceeding with respect to four specific issues: (1) the Commission's authority to adopt the pro-competitive initiatives proposed in the Notice; (2) the need to consider in a separate rule making the appropriate market entry scheme to apply to Intergovernmental Satellite Organizations ("ISOs") and their progeny; (3) the difficulty of applying the FCC's financial qualifications requirements to foreign-licensed satellite systems -- and, thus, the coordinate need to restore two-stage financial processing for non-"self-funded" U.S. applicants; and (4) the need to tailor carefully any exception to the ECO-Sat standard that may be adopted for U.S. video programming networks.

I. THE COMMISSION POSSESSES THE AUTHORITY TO IMPLEMENT THE PROPOSALS IN THE NOTICE, AND IT IS APPROPRIATE TO PROCEED WITH *DISCO II* EVEN WHILE NEGOTIATIONS IN THE WORLD TRADE ORGANIZATION ARE UNDERWAY

As Orion stated in its initial comments, it applauds the Commission's efforts to enhance competition in the market for satellite communications services both in the United States and abroad. Expanding the competitive opportunities for foreign-licensed satellite operators in the U.S., and for U.S.-licensees overseas, provides the most reliable course to more innovative service offerings and lower prices for all consumers of satellite services.

The Commission should expeditiously move forward with this proceeding, taking encouragement from the widespread support that so many existing and proposed members of the fixed satellite services ("FSS") industry expressed for the Commission's initiatives.^{2/} In

^{2/} See generally, e.g., Comments of AT&T Corporation ("AT&T Comments"); Comments of Columbia Communications Corporation ("Columbia Comments"); Comments of Lockheed Martin ("Lockheed Martin Comments"); Comments of PanAmSat ("PanAmSat Comments"). See also Comments of DirecTV, Inc., DirecTV International, Inc., and Hughes Communications Galaxy, Inc. ("Hughes Comments"); Comments of General Instrument Corporation at 3-4; Comments of Loral Space & Communications Ltd. and L/Q Licensee, Inc. ("Loral Comments").

this regard, the Commission should give little weight to the contentions of ICO Global Communications ("ICO") concerning the FCC's authority to undertake the policies articulated in the Notice.

While paying lip-service to the virtues of "open, competitive, and non-discriminatory market access,"^{3/} ICO fires a broadside against the core of the Commission's plan to achieve this objective -- the ECO-Sat test -- contending that the proposal: (1) exceeds the agency's authority, usurping a role relegated to the Executive Branch; (2) violates the so-called "standstill" agreement entered by the United States and others in connection with the negotiations underway in the Group on Basic Telecommunications ("GBT") of the World Trade Organization ("WTO"); and (3) contradicts the positions that the United States has taken in the WTO talks.^{4/} None of these claims holds any merit.

A. Orion Strongly Supports the WTO Process; However, in the Event That Effort Fails, the Commission has Independent Authority to Impose the ECO-Sat Test

As an initial matter, Orion fully supports the WTO process and the efforts of the Executive Branch, through the Office of the United States Trade Representative ("USTR"), to achieve through multilateral bargaining the same pro-competitive objectives to which the Commission aspires in the Notice. Orion hopes the negotiations in the Group on Basic Telecommunications ("GBT") prove fruitful, and it stands ready to assist the USTR in any way that would be helpful in reaching such an outcome.^{5/}

^{3/} Comments of ICO Global Communications at 5 ("ICO Comments").

^{4/} See *id.* at 10-18.

^{5/} See Comments of Orion Network Systems, Inc., Concerning Negotiations on Basic Telecommunications Services at the World Trade Organization, filed with the Office of the United States Trade Representative, August 1, 1996. ["Orion USTR Comments"].

Contrary to ICO's assertions, the FCC's proposals in the Notice represent both an authorized and a valuable contribution to the U.S.'s continuing efforts to open world markets. While ICO may be correct that the Executive Branch possesses primary responsibility for managing U.S. international trade policy, the FCC nevertheless possesses independent authority under the Communications Act to preserve competition in the U.S. communications marketplace from the deleterious effects of unfair and anti-competitive conduct.^{6/} Indeed, Section 308(c) of the Communications Act gives the Commission broad authority to impose terms, conditions, or restrictions on "any license for a station intended or used for commercial communication between the United States . . . and any foreign country" 47 U.S.C. § 308(c).^{7/} Accordingly, to the extent foreign-licensed operators enjoy artificial advantages that would impair or distort fair competition in the U.S. market, the Commission has both the authority and the responsibility to act.

^{6/} See, e.g., 47 U.S.C. § 303 (General Powers of the Commission). Under § 303, the Commission has the authority, *inter alia*, to classify radio station, § 303(a); "prescribe the nature of the service to be rendered by each class of licensed stations and each station within each class," § 303(b); "[h]ave authority to establish areas or zones to be served by any station," § 303(h); and "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . .," § 303(r) (emphasis added); see also, e.g., 47 U.S.C. § 314 (Preservation of Competition in Commerce).

^{7/} In point of fact, Congress created the Commission for the express purpose of:

regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges

Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. § 151 (emphasis added).

Moreover, ICO's own argument contradicts itself. While ICO claims that the Commission lacks authority to impose reciprocal trade requirements as a predicate for affording access to the U.S. communications market, citing an instance where the Commission forbore from imposing such a requirement in the past,^{8/} ICO later notes that the Commission, in 1991, imposed just such a reciprocal standard in connection with international simple resale.^{9/} It should also be noted that, unlike the circumstances that obtained a decade ago in *Regulatory Policies and International Telecommunications*, in the instant proceeding the Executive Branch has expressed no reservations about the Commission's proposals or about any encroachment into Executive Branch authority. Indeed, the efforts of the Commission in the Notice and of the USTR in the WTO process are intended to achieve coordinate ends: the expansion of competitive opportunities for U.S. telecommunications service providers abroad.

B. The Commission's Proposals Do Not Violate the "Standstill" Agreement and Fully Comport With the U.S. Position in the WTO Negotiations

Orion also disagrees with ICO's opinion that adoption of the ECO-Sat test would violate the "standstill" agreement entered by the members of the WTO negotiating group and contravenes positions taken by the U.S. during those negotiations.^{10/} As quoted by ICO, the standstill agreement forbids GBT participants from "apply[ing] any measure affecting trade in

^{8/} ICO Comments at 12-14.

^{9/} *Id.* at 35-36.

^{10/} *Id.* at 16-20.

and leverage."^{11/} Yet, contrary to ICO's claim, adoption of the ECO-Sat test would do nothing to improve the U.S.'s negotiating position in the talks.

In the WTO negotiations, the United States has advanced the most liberal offer for open market access to entice other nations to do the same. Should they do so, and should the U.S. accordingly enter into a multilateral agreement governing satellite communications, the ECO-Sat test would become both moot and a nullity.

However, to the extent other nations prove unwilling to follow suit, the U.S. remains free to revise its offer to reduce the scope of access or to withdraw the offer altogether.^{12/} At the end of the day, the U.S.'s foreign trading partners will either propose satisfactory offers or they will not, but the choice remains entirely theirs. If they are disinclined to open their markets in the face of the U.S.'s most generous offer, there is no reason to believe that the U.S. would achieve any greater "leverage" by advancing what would be, in essence, a less attractive one.

C. Prudential Considerations Also Favor Continuing with the Instant Rule Making

Other service providers do not challenge the FCC's authority to take the action it proposes, but nevertheless appear to suggest that the Commission should not take action until

^{11/} *Id.* at 16 (quoting Decision on Negotiations on Basic Telecommunications, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Geneva 1994) at 461-62).

^{12/} Unlike an arrangement whereby trade in other, *i.e.*, non-communications related, goods or services (grain, for example) could be restricted in order to exact concessions in the GBT thus, arguably, creating a leverage point, the ECO-Sat test operates only with respect to the subject matter of the negotiations itself. Because the U.S. could at any time revise its offer to reduce the amount of access that it has proposed to make available, the existence of a regulatory scheme that would be contingent on the outcome of the talks can hardly be characterized as a meaningful leverage point. In essence, any "threat" that the ECO-Sat test might be said to carry already inheres in the bargaining process itself.

after the WTO process has run its course.^{13/} Orion believes this approach would be ill-advised.

Orion agrees that a multilateral agreement would certainly be the more efficient, and thus, more desirable resolution to these issues. However, in the (perhaps likely) event that the WTO process fails, Orion believes that it will be critical to have a substitute mechanism ready to put into place immediately: The ECO-Sat test represents such a mechanism. Deferring action on the proposals in the Notice until after the WTO process concludes would introduce unnecessary delay in the event that process fails.

II. THE COMMISSION SHOULD NOT BE MISLED BY THE ISOs CLAIMS OF COMPETITIVE INJURY; RATHER, IT SHOULD UNDERTAKE A SEPARATE RULE MAKING SPECIFICALLY DEVOTED TO DEVELOPING THE FACTS AND LEGAL PRINCIPLES RELEVANT TO THE APPROPRIATE FRAMEWORK FOR LIBERALIZED U.S. MARKET ACCESS FOR THE ISOs AND THEIR PROGENY

In their respective comments, COMSAT and ICO mistakenly contend that application of the Commission's ECO-Sat test (in either its "route market" or "critical mass" formulations) to them would actually impair competition because it would deny U.S. consumers access to their capacity and services.^{14/} This argument resonates with the

^{13/} See Comments of Motorola Satellite Communications, Inc. and Iridium, Inc. at 13-14; Comments of Airtouch Communications at 8-10; Comments of GE American Communications, Inc.

^{14/} Comments of COMSAT Corporation at 2, 5, 10-11 ("COMSAT Comments"); ICO Comments at 33. Significantly, in making this argument, these entities evidently concede that they would be unable to satisfy either a "route markets" or "critical mass" standard. In view of the COMSAT's, INTELSAT's and ICO's size and dominant market position, the Commission should reject their request that the Commission apply only the most liberal and flexible market entry tests. COMSAT and INTELSAT urge the Commission to apply an unstructured and broadly subjective "effect on competition" standard to govern liberalized U.S. market entry by these organizations. See COMSAT Comments at 27-33; INTELSAT Comments at 7-9. Advocating such a test, the ISOs focus only on facts within the U.S.

(continued...)

familiar ring of the plaintive appeals made by the Bell Operating Companies against the line of business restrictions a decade ago and, Orion respectfully submits, they deserve about as much sympathy. Just as the courts and Congress, following the breakup of the Bell System, wisely recognized that a true competitive market had to take hold in each of the restricted arenas before the BOCs would be permitted to enter them, so too should the Commission now recognize that unrestricted U.S. market access for this signatory and scion of the ISOs, as well as for the ISOs themselves, inevitably will sow the seeds for serious disruptions in the competitive market.

This is particularly so because, as noted above (*supra* note 14), ICO and COMSAT concede that they could not satisfy either a "route market" or "critical mass" ECO-Sat review. The Commission has already recognized in the Notice the potential for market disruption that exists when a foreign competitor enjoys an unfair competitive advantage arising from its access to overseas markets that are closed to U.S. satellite operators. Here, COMSAT and ICO acknowledge, as they must, that they enjoy virtually ubiquitous access to markets around the world. Contrary to ICO's and COMSAT's claims, liberalizing access to the U.S. market for the ISOs and their affiliates and "privatized" spin-offs is not merely an issue of competition "by the numbers" (*i.e.*, letting in as many entities as possible regardless of their characteristics). Rather, the Commission must also be concerned with fair

14/(...continued)

market. For example, COMSAT and INTELSAT both cite the assertedly limited amount of INTELSAT CONUS space segment capacity available to COMSAT to support the claim that COMSAT could have only minimal market power if permitted to provide U.S. domestic service using ISO capacity. They fail entirely to consider the impact that the ISOs' overseas advantages would have on competition within the U.S. market were the ISOs permitted the unencumbered access they seek. For its part, ICO suggests an even flimsier approach, urging the Commission to rely simply on "encouraging" other notifying administrations to adopt a "no special concessions" condition for their MSS operators. ICO Comments at 37.

competition. Fair competition is not served by opening the market to entities, like the ISOs and their affiliates, which possess both the ability and the incentive to impede their competitors.

In its Comments, Orion observed that the issue of greater market access for the ISOs and their progeny would require the Commission to traverse a thicket of complex legal and factual issues that require special attention. For example, as the Commission observed in the Notice, the ISOs and their signatories present unique issues of treaty obligations and the special advantages that derive from the privileges and immunities they enjoy. In addition, as previously noted, they benefit considerably from their "dominant positions in the global market [resulting from] . . . their size and . . . the fact that, in general, their members are the primary if not exclusive providers of fixed and mobile maritime services in most major national markets."^{15/}

The ISOs' successors and spin-offs present similar analytical difficulties to the extent that they require the Commission to assess the nature of the relationships between these entities and their ISO parents -- a task made substantially more difficult by the uncertain factual context created by the nascent state of privatization efforts. Indeed the parties' comments only serve to underscore this conclusion. As COMSAT and ICO comments make abundantly clear, significant and complex factual and legal issues need to be examined before the Commission can determine the appropriate regulatory model to adopt for them. For example, both COMSAT and ICO flatly assert that they are private entities and, as such, enjoy no privileges and immunities;^{16/} however, neither of them adequately addresses the *de*

^{15/} Notice, slip op. at 22 ¶ 62.

^{16/} COMSAT Comments at 13, 14; ICO Comments at 44.

facto competitive advantages they enjoy as a consequence of their relationships to the Inmarsat and INTELSAT systems and with the member states of those organizations.

Accordingly, as it did in its Comments, Orion again urges the Commission for the time being not to expand the rights of the ISOs or their affiliates or successors within the U.S. market including, specifically, continuing to forbid COMSAT from providing U.S. domestic service using INTELSAT or Inmarsat capacity. Rather, the Commission should undertake a separate rule making specifically to address the issues connected with liberalized market access for the ISOs and their progeny.^{17/} The difficulty of the issues involved, the uncertain factual context for the analysis, and the potential harm to competition that a poor policy choice could produce all support taking a more thorough, considered, and in-depth approach to these issues than the present proceeding will allow.

III. THE FCC CANNOT APPROPRIATELY SUBJECT FOREIGN SYSTEMS TO ITS FINANCIAL QUALIFICATIONS RULES; ACCORDINGLY, IT SHOULD LEVEL THE PLAYING FIELD BY SUBJECTING ALL U.S. APPLICANTS TO A TWO-STAGE FINANCIAL SHOWING

In its Comments, Orion highlighted the inherent inconsistency that existed between the Commission's stated intention to accept the sufficiency of foreign licensing decisions and its proposal to require an earth station applicant to submit an exhibit demonstrating "that the non-U.S. satellite meets all Commission technical, financial, and legal requirements."^{18/} Orion expressed particular concern over the financial qualifications showing. While Orion urged the Commission to reconcile this inconsistency, several other commenters, representing

^{17/} COMSAT appears to agree that a separate proceeding is necessary to evaluate these issues. See COMSAT Comments at 33 ("This is the wrong time and place to adopt an ECO-Sat scheme prospectively applicable to INTELSAT or Inmarsat affiliates that currently do not exist . . .").

^{18/} Orion Comments at 5.

all types of operators -- FSS, MSS, DBS, and the ISO community -- also seized upon this issue and urged the Commission to abandon its proposal to require such a qualifications showing.^{19/}

For the reasons stated in its Comments, Orion is agrees with these parties: The Commission would be unable to enforce such a requirement without inviting reprisals from foreign administrations who would likely impose similar requirements (including financial qualification standards) on U.S. licensees proposing to enter their markets.^{20/} Such a situation would be entirely counterproductive, obstructing rather than expanding competitive opportunities for U.S. operators abroad.

However, as Orion alluded in its Comments, such a conclusion creates a dilemma for non-self-financed U.S. licensees who are subject to such a standard.^{21/} On the one hand, imposing such an obligation on foreign licensees could diminish opportunities for U.S. licensees overseas by creating an incentive for foreign administrations to adopt similar barriers. On the other hand, however, as PanAmSat correctly notes,^{22/} absent such a requirement foreign operators would enjoy a decided advantage over U.S. licensees, thus impairing fair and effective competition. As Orion stated in its Comments, the only effective

^{19/} Columbia Comments at 21; Loral Comments at 21; Hughes Comments at 20-22; and COMSAT Comments at 38-39; *see also* Lockheed Martin Comments at 6 n.7.

^{20/} Such a situation also raises a standardization problem, suggesting the possibility that an individual operator might be compelled to satisfy a different qualification standard in each country whose market it desires to enter.

^{21/} As Orion has elsewhere argued, the financial qualification "standard" applied to self-funded applicants is, in fact, no standard at all. *See* Petition for Reconsideration filed by Orion Network Systems, Inc. in IB Docket No. 95-41, April 11, 1996 at 11-12 ("*DISCO I Reconsideration Petition*").

^{22/} PanAmSat Comments at 4.

way to resolve this dilemma, and return a level playing field to the market, would be for the Commission to liberalize its financial qualification requirements for U.S. applicants. In short, the Commission should revisit its decision in *DISCO I* and apply the two-stage financial qualification standard to all applicants, both those who propose to provide primarily international services and those who propose chiefly domestic operations.

IV. THE NETWORKS' CAPACITY CONCERNS WARRANT SOME MODIFICATION OF THE ECO-SAT TEST; HOWEVER, THE COMMISSION SHOULD CAREFULLY LIMIT ANY EXCEPTION TO THE RULE TO THOSE MARKETS WHICH U.S.-LICENSED OPERATORS ARE INCAPABLE OF SERVING

In joint comments the three major broadcast television networks and the Turner Broadcasting System, Inc., (collectively, the "Networks") express concern that the Commission's proposed ECO-Sat test in specific circumstances may impair their ability to obtain satellite capacity to transmit international video programming and associated audio programming materials.^{23/} The Networks urge the Commission to exclude international video transmission from application of the ECO-Sat test. Such an exception is necessary, they contend, because the Networks' newsgathering and programming functions require ubiquitous access to all regions of the world, and uniform application of the ECO-Sat test, they fear, will deny them necessary access to areas of the globe unserved by U.S.-licensed providers. Moreover, they argue, the delays engendered in compiling the market access data required for application of the test would be incompatible with the time-sensitive nature of breaking news and special event coverage.^{24/} Accordingly, the Networks request that they

^{23/} Comments of Capital Cities/ABC, Inc., CBS, Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. at 11-14 ("Joint Comments").

^{24/} *Id.*

be permitted to access any non-U.S.-licensed satellite system for the purpose of transmitting international video programming materials without an ECO-Sat analysis.

In the alternative, the Networks request that the Commission forbear from applying the ECO-Sat test on those routes where no alternative sources of satellite capacity exist with the necessary coverage, power, and bandwidth to complete the transmission in question, and that it narrow the scope of any ECO-Sat analysis to the specific route market at issue for the transmission rather than to all of the potential route markets.^{25/}

Orion is sensitive to the peculiar requirements of the Networks' programming operations and agrees that some modification of the ECO-Sat test is warranted to address their concerns. Nevertheless, Orion continues to believe that the ECO-Sat test should govern to protect the competitive interests of U.S.-Licensed operators in any overseas market which they are capable of serving. Accordingly, Orion would object to the blanket waiver of the ECO-Sat test requested by the Networks. However, Orion agrees that, as a practical matter, if no U.S. operator is technically capable of providing service to a particular country or region, then no genuine issue of competitive opportunities would exist. Orion would support an exception of the ECO-Sat test as to such markets. That said, however, the Commission should recognize that with the passage of time, the number of such markets may be expected to diminish.^{26/} Accordingly, the Commission should be prepared to revisit this issue at a later time to reevaluate whether an exception remains appropriate for any markets for which it may be granted.

^{25/} *Id.* at 16, 17.

^{26/} Indeed, the PanAmSat system is already very close to providing ubiquitous service world-wide.

V. CONCLUSION

In conclusion, Orion respectfully recommends that the Commission adopt a regulatory scheme for entry of foreign-licensed satellite systems into the United States market that is consistent with the views set forth in Orion's Comments filed on July 15, 1996 and in these Reply Comments. Orion further respectfully recommends that the Commission issue a Further Notice of Proposed Rule Making to address the specific issue of liberalized market entry for the ISOs and their affiliates and spin-offs.

Respectfully submitted,

ORION NETWORK SYSTEMS, INC.

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Date: August 16, 1996

CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, a secretary for the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, hereby certify that I have, this date, sent copies of the foregoing "Reply Comments of Orion Network Systems, Inc." to each of the following by First Class United States mail, postage prepaid:

The Honorable Reed E. Hundt
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The Honorable James H. Quello
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Federal Communications Commission
1919 M Street, N.W.
Room 802
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The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
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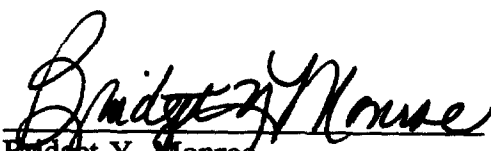
The Honorable Susan Ness
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Dated: August 16, 1996


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